



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
August 25, 2009
APPROVED**

MEMBERS PRESENT

Joanne Rogers, Chair
John Papacosma, Vice Chair
Robin Brooks, Secretary
Dorothy Carrier
Roberta Floccher
Debora Levensailor, Associate
Burr Taylor, Associate

MEMBERS ABSENT

STAFF PRESENT

Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary
William Wells, Code Enforcement Officer

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:30 PM by Joanne Rogers, Chair. She also mentioned that the meeting was being held on an "irregular" day (a Tuesday). Introductions were made of Board members, and the Pledge of Allegiance was recited.

The Chair reviewed the Agenda, and said that the site visit had been held the previous day; she had attended along with Mr. Papacosma, Mr. Taylor, Mr. Brooks, Ms. Carrier and the Town Planner, Ms. Tukey.

CONSIDERATION OF MINUTES

The Chair asked for a motion to accept the Minutes of July 15, 2009 as printed. The Chair asked that her wording "...but should go back to the Planning Board" on Page 5 be removed. The Board agreed to the correction; the motion was seconded. The Minutes were accepted unanimously, as corrected.

ELECTION OF OFFICERS

Ms. Rogers nominated Mr. Papacosma as Chair and Ms. Floccher as Vice Chair. The motion was seconded; the Board agreed. It was also agreed that Mr. Brooks continue on as Secretary. Ms. Rogers turned the proceedings over to Mr. Papacosma.

The Chair reviewed the meeting procedure for the audience.

NEW BUSINESS

09-08-01 Sharon Johnson (Owner/Applicant), Site Plan Review, Tax Map 17 Lot 36, 6 Malcolm Drive, Harpswell

Sharon Johnson addressed the Board. She stated she wanted to continue to retail lobsters at the new 24 ft. x 24 ft. building on the property.

The Chair asked the Board if there were any questions. The Town Planner stated that the Board should address the jurisdiction of the matter, and that procedure should also be clarified. She referred the Board to their handout of Page 21 of the Site Plan Review Ordinance, §16.4 "Minor Changes to Approved Plans or Activities Requiring Site Plan Approval." Ms. Tukey explained that, normally, non-residential construction would require site plan review by the Planning Board. However, the ordinance allowed for minor changes to existing site plans to be amended by the applicant and to be reviewed by the Code Enforcement Officer, as long as it complied with the approval standards of all Town ordinances, and that it wouldn't "alter the essential nature of the original project." She wondered if there had already been a site plan for the property (she wanted the question referred to the Code Enforcement Officer), and also if it complied with all the approval standards (it seemed to be within the 100 year floodplain).

Ms. Carrier stated she did not remember "doing a site plan;" she said the Board had heard a proposal and made a recommendation to Town Meeting to change the classification of the lot, from Shoreland Residential ("SR") to Shoreland Business ("SB"). She said she would like "minor" to be defined; she thought that, if a site plan had been done and a boundary line was to be moved, that would be considered minor; if you wanted to construct a building, it would not be considered minor.

The Chair asked Ms. Johnson if she had gone before the Board before for a site plan; she responded that she had "when the wharf was built," which was 2003/2004. The Chair asked the Code Enforcement Officer if he was "cognizant of a prior site plan review;" Mr. Wells responded "no."

The Chair referenced the word "minor" and stated the matter was about building a garage and other structures on the wharf. The Town Planner explained that, since the Code Enforcement Officer said there had not been a site plan review prior to this date, it would not be considered a minor change and the Board would just be doing a site plan review. The Board would not be taking jurisdiction because it wouldn't fall under that section of the ordinance. She said the Board would now "launch into a brand new site plan application." Ms. Tukey explained that the Code Enforcement Officer had, in his memo, addressed most of the issues she would normally have addressed (with the exception of the 100 year floodplain concern).

The Code Enforcement Officer addressed the Board and said that, historically (as long as he has worked for the Town), if the business concerned "has been an existing business, especially a long standing fishing operation," because of it's "grandfathered nature," it would be considered to have "automatically adopted a site plan review." He said that a 500 sq. ft. building, as an addition to an ongoing commercial fishing operation, to him, would not be a major expansion.

The Chair stated that the issue needed clarity; in the past, if someone wanted to add on to a structure regardless of the size, it would typically have had a site plan review. He said that they have had site plan reviews for "much less activity than was going on here." He suggested that it should be "figured out internally" who should address §15 of the ordinance, and under what situation the Board should get involved.

Mr. Wells said that, in the future, anything that was not "strictly residential, regardless of the size," would automatically go before the Planning Board. The Town Planner stated that the procedure would be similar to the shoreland zoning jurisdictional question. The Board would get a site plan and an explanation of the basic idea, and they would decide if the applicant was to come before them again for more discussion. They would do that for both shoreland and site plans. Mr. Wells said he would prefer the Planning Board did that, instead of him. The Chair reiterated that the procedure needed clarification and that it was an internal matter.

The Town Planner referred to the Code Enforcement Officer's responses to the Site Plan Review Ordinance; everything was complied with except the issue of the 100 year floodplain. The Chair commented that, with regard to the Letter of Map Amendment ("LOMA"), would the application done by Dolphin Marine Service cover that, since the property was "right next door?" Mr. Wells responded that it was "not automatic;" Ms. Johnson was "going through the process." He didn't think it would affect the Board's approval, either way.

Ms. Rogers moved that, since the Code Enforcement Office had reviewed the proposal pursuant to §16.4 of the Site Plan Review Ordinance, and had determined that it did not affect compliance within the approval standards of said ordinance, it would therefore qualify as a minor site plan amendment approvable by the Code Enforcement Office and that the Board would not exercise jurisdiction over the item.

The motion was seconded, and the Chair asked for further discussion. Ms. Carrier reminded the Board that they had determined there had been no site plan review, initially. The Town Planner had said they would move on to the next step which would be what Mr. Wells addressed in his memo which was what the Board would have done. She said it was not a minor change; they "were approving a site plan."

Ms. Rogers said she was uncomfortable at something they had "allowed to get this far with the applicant;" the Board would be deciding a change in the process that would hold it up longer. Ms. Carrier clarified that the Town Planner had suggested they use Mr. Wells' memo. She said the wording of the motion indicated the matter was a minor adjustment to a site plan; she did not agree.

Ms. Floccher explained that Ms. Rogers said it was a minor change, but it could not be if, in fact, there had not already been a site plan review, based on Ms. Carrier's prior statement. There would have to be a site plan review "using this as the criteria to establish it." Ms. Carrier agreed, and clarified that the Board could accept what Mr. Wells wrote in his memo, if there were no questions.

The Chair stated that the Board agreed they would take jurisdiction on the application, and accept the "preparation" the Code Enforcement Officer compiled; they would approve it on the basis of that information.

The Town Planner recommended they add, as a condition of approval, the LOMA amendment to the Federal Emergency Management Agency ("FEMA"), to be submitted to the Code Enforcement Officer.

The Chair asked for a motion; Ms. Rogers withdrew her previous motion, and Mr. Brooks withdrew his second.

Ms. Carrier suggested it would be a "plain" approval of the site plan review based on the Code Enforcement Officer's memo dated August 17, 2009, with the condition that the applicant must submit the LOMA to FEMA; this was agreed to be the motion, and was seconded. There were not additional comments; the motion passed unanimously.

09-08-02 Orr's Island Library Association (Owner/Applicant), Site Plan Review, Tax Map 30 Lot 76, 1699 Harpswell Islands Road, Orr's Island

Ms. Rogers informed the Chair that she would abstain from the vote on this matter; Ms. Floccher also said she would abstain. [Note: Ms. Rogers and Ms. Floccher are on the Board of the Orr's Island Library Association.] The Chair appointed Ms. Levensailor and Mr. Taylor as full voting members for this proceeding.

The Town Planner explained to the Board that the matter fell under the previously discussed §16.4 of the Site Plan Review Ordinance. She stated it was known that it was a pre-approved site plan. She said the Board could choose to accept jurisdiction of the matter, or not (which would leave it with the Code Enforcement Officer).

The Chair commented on the "uniqueness" of the application, and explained that the applicant had gone before the Board of Appeals for a variance. Typically, that would follow a Planning Board review. If the Planning Board had denied the application, they would then go before the Board of Appeals for a variance. He explained that it was "OK" to go before the Board of Appeals and "they could offer a variance per the request of the Library." Since that is what was done, and the issues related to setbacks and lot coverage (both of which were exceeded due to the additional construction), the Board needed to decide to either take jurisdiction or accept that the variance had been submitted and approved.

The Chair said that the Code Enforcement Officer had, as with the previous applicant, gone through the Site Plan Review Ordinance and addressed his concerns. He also said he had never seen it done before [where an applicant would go before the Board of Appeals before the Planning Board], although it was "entirely appropriate."

The Town Planner said that, in her experience (Harpswell was the fifth town she had worked for), the Board of Appeals came before the Planning Board, but she could understand "the reverse." She said that, usually, you would want the applicant to receive all their variances and address all those questions prior to.

The Chair gave personal experience of his time on a Zoning Hearing Board in a town in Pennsylvania where he lived for many years. He said there was no Planning Board, just a Code Enforcement Office. "The only thing we did see was requests for variances." He was familiar with the process, but unfamiliar with the process in Harpswell.

The Town Planner said she had worked in towns both in Pennsylvania and in Maine, and in those towns, the Board of Appeals came before the Planning Board. She said she had heard the arguments from some of the Planning Board members to have the Planning Board come first in the process because, if the Board of Appeals came first, it would be "almost impossible in the minds of the Planning Board" to change what the Board of Appeals had decided; it would be very difficult to send the applicant back to the Board of Appeals. There was discussion among the Board members.

The Town Planner suggested the best idea might be for the applicant to go before the Planning Board with a sketch plan; the applicant would have spent no money for fees or the cost of a plan. They would get the Board's comments first, and then they could go before the Board of Appeals with a more firm plan.

The Chair recognized Mr. Wells, who stated that the Planning Board and Board of Appeals were two "entirely separate entities." He said, in this case, the applicant "acted appropriately" by going before the Board of Appeals initially to obtain their variance. The Chair said that he had read the ordinance, and it did not state that everything had to go through the

Planning Board; however, only the Board of Appeals could issue a variance, and the Planning Board could not. Mr. Wells said the Planning Board would not be under any obligation to approve or deny the applicant; they acted separately from the Board of Appeals.

The Chair suggested that the issue of jurisdiction was “moot;” it would not make sense to have the Planning Board take jurisdiction. The precedence already existed in the ordinance. Mr. Wells said the request for variance was an infrequent occurrence. He stated that the Board of Appeals addressed “dimensional standards;” the Planning Board could not approve or deny based on that because they could not issue a variance. He felt it logical that an applicant would want to have their variances in place before they went before the Planning Board. There was some discussion regarding the idea that it would be easier for an applicant to go before the Board of Appeals for variances initially.

The Chair said that it would depend on how the Board of Appeals dealt with the application; the Planning Board had turned down many applicants for not adhering to the ordinances, and very few had been overturned by an appeal. There was some discussion; Mr. Wells said that, regardless of what the request was, the Planning Board would have to approve based on their own guidelines.

Mr. Brooks stated that, if it were not for the setback and the impervious lot coverage issues, he understood it would be approved by the Code Enforcement Office. Mr. Wells clarified that the “expansion of use” should go to the Planning Board; they could choose to take jurisdiction (it was a minor expansion). He said there had been a site plan.

Mr. Brooks moved that the Planning Board not take jurisdiction; the Chair seconded, and asked for any further discussion. Ms. Carrier said she would like the definition of “minor” to be addressed at a later time.

Ms. Levensailor clarified that, if the Planning Board did not take jurisdiction, the applicant would be free to pursue their project, as overseen by the Code Enforcement Office, which had already confirmed the applicant had complied with the ordinances.

The Chair asked for any further discussion; there was none. The Board voted unanimously to not take jurisdiction. (As previously stated, Ms. Rogers and Ms. Floccher abstained from the vote.)

The Chair indicated that Ms. Rogers and Ms. Floccher were to continue with their participation in the meeting at this time.

John Robbins addressed the Board, and stated he was not presently a member of the Library Trustees, but was a citizen. He stated he had “many years on another planning board” and wanted to support the idea of sketch plan review, as previously presented by the Town Planner. He gave personal experience, and said the process was a brief sketch plan review initially, and the applicant would have to go to the planning board to do certain things, and to the appeals board to do certain things. That way, the applicant knew where they stood. Mr. Robbins said it worked very well in Kittery (where he had come from). The Chair said he remembered a “pre-application meeting,” which would have been similar to a sketch plan review.

09-08-03 Dolphin Marine Service, Inc. (Owner/Applicant), Site Plan Review, Tax Map 17 Lot 34, 515 Basin Point Road, Harpswell

Billy Saxton addressed the Board, and said his brother Chris was also in attendance, along with Jay Chase [also involved in the project]. He said they had invested “a lot of time, effort and money in the planning” of their project. Mr. Saxton said their family had owned and operated the Dolphin Marina for many generations on Basin Point. It had become necessary to improve the infrastructure to meet the needs of the community as well as to meet Federal and State regulations.

Mr. Saxton referenced an aerial photograph of the site on an easel, and also the site visit attended by the Board members the previous day. He gave highlights of their project, and said they had begun reorganizing their operations and also the environmental impact from seven acres down to about two acres. Their project included a new septic system, a new fuel tank and dispensing system, a new well and a new boat sewage pump out facility. They would increase “green space” by 19%; increase and reorganize safe parking for the restaurant and marine activities; increase the buffer of the restaurant and marine offices from 14 ft. to 30 ft. to the high water mark; a wharf replacement and expansion would be instituted to safely accommodate marine activities; there would be a storm water prevention plan; the construction of an indoor storage

and maintenance building would be instituted to meet DEP (Department of Environmental Protection) and EPA (Environmental Protection Agency) regulations; and the "stabilization of the shoreline bulkheads and the eroding shoreline."

Mr. Saxton stated they had, over the past two years, created "great partnerships" with several State and Federal agencies. They have partnered with the U.S. Fish and Wildlife Service and the Maine Department of Transportation to become a "premier boating destination for transient boats." New services for the boating community would include a permanent weather center, bathrooms and cleaning stations, additional dock space, expanded wharf access that was ADA (Americans with Disabilities Act) accessible, and "other facilities considered critical to the U.S. Fish and Wildlife Service." They have also worked with the U.S. Army Corps of Engineers, the U.S. EPA, the Harpswell Code Enforcement Officer, the Harpswell Town Planner, and almost "every department" of the Maine DEP. Mr. Saxton said that, currently, they had sign offs from the Maine DEP, the U.S. Army Corps of Engineers, Maine Historic Preservation, the Endangered Species Act, §7, and the National Environmental Protection Act.

Mr. Saxton summarized, and stated they felt they only had "one chance to do the project well," and part of their intention was to protect the working waterfront, and water access, for future generations.

Chris Saxton addressed the Board, and referred to the site plan illustrated on the easel. He said the plan would include the addition of 16 boat slips and 20 moorings. Also proposed were a rebuilt wharf deck and the rebuilding of shoreline bulkheads. He said they would also reorganize parking. The proposal would also reduce their environmental impact from seven acres to two acres. The proposal would increase green space by 19%; storm water control measures were also proposed (a stone drip edge around the building and the inclusion of vegetative buffers). They would also propose to expand a portion of the pier to accommodate safety and emergency response equipment as regulated by the DEP and marine "best management practices."

Regarding the layout, Mr. Saxton explained that things would be more centralized: boat hauling, boat storage, the boat shop, and boat repair would be in one safe location. They also proposed to centralize the pedestrian activity of the chandlery, office, weather center, restrooms, shower and restaurant and would push against the sideline setbacks to the water (doubled, from 14 ft. to 30 ft.)

The Town Planner asked Bill Saxton to point out the offices and chandlery on the site plan; he also indicated the location of parking, boat storage and the maintenance building. He referred the Board to the plan in their packet materials. He also showed the location of a new septic system, built in 2008. Mr. Saxton said the proposed changes would limit interaction of restaurant customers with areas accommodating marine activities, for safety reasons.

The Town Planner asked for an explanation of their status regarding the LOMA process. Mr. Saxton said they had hired a firm to do wave analysis of one foot contours for the entire property (Sebago Technics); he referred the Board to their packet materials. He said they had submitted their application to FEMA and were waiting to hear.

The Chair asked the Board if there were further questions. Mr. Taylor related that a 17 ft. wave had hit Mount Desert Rock in a recent storm, and Mr. Saxton had discussed a 30 ft. wave.

Ms. Carrier asked for comment from the Code Enforcement Officer about the addition of boat slips and their impact on the harbor. Mr. Wells explained that he did not; comment would come from the Harbormaster, who had issued a memo, which should have been in the Board's packet materials. He clarified that what was attached to land the Code Enforcement Office reviewed, but out into the water, they did not.

Jay Chase, a consultant hired by the Saxtons, addressed the Board. He stated that the Army Corps had reviewed the application with regard to the expansion of the pier; they had responded affirmatively.

Chris Saxton addressed the Board and stated that there had been a memo from the Harbormaster. The Town Planner said that the Harbormaster had to review it, but it was not necessary that his memo go to the Planning Board. [The Harbormaster's memo was part of the wharf application process which fell under the jurisdiction of the Code Enforcement Office.] Ms. Tukey clarified for the Board that the questions they had to consider regarding the wharf had been addressed in her memo. She said there was one outstanding item (the wharf was larger than the ordinance allowed); they could

decide whether it was appropriate. She also mentioned that it was going to be made ADA accessible, which could have accounted for the large size.

The Code Enforcement Officer stated he had conducted a wharf hearing at the site, which was also attended by the Harbormaster, who was also in favor of the project.

Chris Saxton explained that the extra four feet in width was necessary for storage of spill prevention equipment and safety equipment.

The Chair asked if there were questions from the audience; there were none.

Ms. Levensailor said she had been "extremely impressed" with the application with regard to energy awareness and conservation of green space. She also commended the applicants for obtaining a grant, and commented on the buffer to the water and the reconfiguration of the traffic flow. Ms. Levensailor said she was glad they set aside the end of the Point for conservation measures. She asked if there would be any public access to that. Chris Saxton explained that piece of land was in a trust that belonged to his father, his uncle and his aunt.

Ms. Rogers made the motion that the applicants had met the Findings of Fact under the applicable Shoreland Zoning Ordinance standards §15.2.3 regarding the LOMA letter, and §15.3.4 regarding the proposed width of the wharf, and moved that the application be approved with the standard conditions of approval and the additional conditions of approval. The motion was seconded.

The Chair asked if there was further discussion; Ms. Carrier stated that it was the second time the Saxton family had come before the Planning Board with a plan, the other time was for a subdivision. She said she concurred with what Ms. Levensailor had said. She commended the applicants on their presentation.

The Board voted unanimously to approve the project.

The Chair mentioned that an abutter letter in their packets had not been addressed.

OLD BUSINESS

Blasting Ordinance Review

The Chair introduced the matter of the July 19, 2009 draft of the revised Blasting Ordinance. The Town Planner stated she had shortened it, as the Board had previously requested, to "basic necessities," i.e. definitions and purpose, and gave authority to the Code Enforcement Officer to ask for more detail if he thought necessary; blasting would also require a permit and basic information. Ms. Tukey said she had also removed Planning Board review, as the Board had requested.

The Board commended the Town Planner for the draft ordinance she had presented to them. There was discussion regarding the clarification of who the applicant would be [the company/contractor doing the blasting].

Ms. Carrier asked the Code Enforcement Officer if there would be a form for the applicant to fill out; he responded that it could be addressed in the Basic Land Use Application. Mr. Wells explained that the applicant would have already applied to the State and would have obtained a license for each specific blasting event; it would be necessary to confirm that by a Town application process. He also commented that it was a good idea to have "all this [information] on file;" there could be a "considerable amount of liability" to the Town. The Town Planner thanked Mr. Wells for his review of the proposed ordinance.

Ms. Carrier asked Mr. Wells how extensive any additional requirements would be for a blast, i.e. hydrologic and geologic studies, etc. She said that, in certain cases, it would be "cost prohibitive" if it was just a small blasting job, such as for a septic tank. He responded that he did not anticipate extensive, additional requirements in Harpswell, and explained that modern blasting can be very precise.

The Town Planner told the Board that the next step would be to take the proposed ordinance to the Selectmen; however, it should be opened to public comment at the Planning Board meeting.

Nola Denslow addressed the Board. She explained that she lived on "the road that was directly perpendicular to Hamilton Place; two-thirds of a mile from the blasting." She had lived there for seven years, and had the "brackish water" many people [in Harpswell] had, and was corrected by a filter system; that situation had worked well for five years. She gave personal experience of how her water had recently changed for the worse and could not be corrected by filtration. Ms. Denslow also said she had spoken to a neighbor who had two ponds and told her that, twenty four hours after blasting down the road had occurred, there would be a film across the pond water. She said that (1) blasting would affect an aquifer, and (2) Harpswell has "a fragile aquifer." She suggested that, in the future, "pre-assessment" could be required by the "proper kinds of ordinances."

Ms. Denslow gave further personal experience of the time when she lived in a small town in Vermont and blasting had been done. She said she had been given a card with a phone number to call if there were any problems with the water during the blasting or during the months immediately afterward. She said she hoped for two things from the proposed ordinance: (1) that, in Harpswell, it should be considered whether blasting should be a "first resort" (major blasting should be a last resort), and (2) examine other possibilities, i.e. think about how an environment could be modified differently and do less blasting. Ms. Denslow said she wanted the ordinance to address (1) major blasting as a last resort, and (2) pre-assessment, and perhaps have the State become involved in that also. Ms. Denslow also suggested the code requirements should be stricter.

The Chair addressed Ms. Denslow and her situation, and also spoke to his own personal situation. He suggested that recourse could come from providing evidence, both before and after [the blasting]. Ms. Carrier said that, with reference to Page 2(E) (3) of the proposed ordinance, a phone number could be an additional request. Ms. Rogers said that the quality of water prior to blasting would have to be proven; Mr. Taylor said that the 500 ft. requirement would not address the two-thirds of a mile Ms. Denslow spoke of. Mr. Brooks spoke to the notification process; there was discussion. Ms. Carrier asked if a notification process would be required of every blast, regardless of size. There was further discussion.

The Code Enforcement Officer addressed the Board, and stated that reputable contractors did a "good job" of notifying abutters within 250 ft. or so; he suggested the possibility of the application fee being more than the standard \$50, and the Code Enforcement Office could notify abutters. There was discussion regarding the cost of notifications, i.e. newspaper notices. There was further discussion regarding the purpose of notification with regard to recourse. Mr. Wells said the Planning Board had used "diligence" when they proposed an ordinance that would protect the citizens of Harpswell.

The Chair asked Mr. Wells the frequency of blasting occurrences; he responded that there were at least thirty or forty a year. Mr. Wells said there was "no large volume" of abutter complaints, perhaps one a month, but maybe not even that many, and there were occasional inquiries. He said he thought it was "beyond the scope" of a blasting ordinance, or any ordinance, to address the issue of water quality.

Ms. Floccher suggested signage around town as a means of notification, perhaps posted seven to ten days prior to the blasting. She thought that would be enough time for anyone to get a prior water sample, "or whatever they wanted to do," for their own protection. Mr. Wells reiterated that there was usually no problem with reputable blasters.

Ms. Rogers noted that a sign would not have helped her situation; it was at the end of the Point and she would not have gone by it. Ms. Floccher also suggested notifications via cable television. Mr. Wells suggested all three means of notification: newspaper, cable television and signage.

Mr. Brooks said there was still the problem of recourse, even if "before and after" water samples were taken. The Board agreed that issue was "out of their hands;" however, due diligence should be done. Ms. Carrier said the proposed ordinance was "a good start;" it would provide information and notification that was worthwhile. However, it would not eliminate the problem of wells being affected; it was agreed that nothing would. There was discussion regarding the ultimate cost to the consumer.

The Chair said it would be very difficult to prove if a blast affected a well; it could be hearsay, an accident, etc. It was difficult to get enough information for recourse. The Board agreed it was a good start; Ms. Rogers suggested the addition of types of notification. The Town Planner suggested contacting some blasters to get information regarding geologic effects, so the Board could understand more of the science involved. Ms. Floccher said the information they would get

might address one situation, but not “fifty others.” They would be told it involved “some risk, for some people, at some times.” Ms. Tukey said that was “exactly ordinance work.” Ms. Floccher said they should just do due diligence, and recognize there could be “a benefit, a risk, and a harm.” Ms. Carrier said they “could not alleviate all of them.”

Mr. Taylor said he would like more information regarding the aquifer. The Chair suggested that well diggers could be a useful source; a hydro geologist could be another possibility. He reiterated that Harpswell was a very fractured system of rock ledge. Mr. Taylor also suggested they could advertise for information from the community to say the Board was considering a blasting ordinance, and perhaps obtain information that could be helpful “later on.”

The Chair stated that the proposed ordinance “was an excellent document” and thought more could be learned through further research and study.

Ms. Denslow addressed the Board. She suggested the Board needed to get more information to work with, i.e. from the community, government sources and geologists. She thanked the Board members for their work.

The Chair confirmed with the Town Planner that the ordinance would go before the Selectmen and then through the public hearing process, but would go before the Planning Board again as a draft that would include their proposed language.

Shoreland Zoning Ordinance Amendment – Non-Conforming Structures

The Chair explained the purpose of the proposed ordinance change was to address expansion in the shoreland zone, non-conforming structures; applicants could expand the structure by 30% and not include the foundation. He said the proposed ordinance used the word “foundation” which would be defined to include a basement. He read from §10.3.1.1 “Further Limitations” of the proposed ordinance, and then from §10.3.1.2. The Chair summarized, and stated that, if the foundation was more than five feet, it would then count toward the 30%. He said that would also allow for the placement of utilities, specifically oil tanks, water, etc.

The Town Planner reiterated that it was not possible to have a complete foundation if that was calculated into the 30%. She explained that there could be a foundation to some point, but the rest of it might have to be on posts. Ms. Tukey also stated that the Code Enforcement Officer had reviewed the proposed language.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

There were no jurisdictional matters to discuss.

Town Planner’s Updates

The Town Planner addressed §16.4 of the Site Plan Review Ordinance. She said that, if the Planning Board would decide to take jurisdiction of a matter, it would require the applicant to go before the Board again. The memo to the Board would be done by the Town Planner instead of the Code Enforcement Officer; the procedure would be similar to that required by the Shoreland Zoning Ordinance: (1) the Code Enforcement Office would have the application and then send out notices to abutters and to the Board, (2) the Board would also get a basic site plan, (3) the Board would review it at their meeting (no site walk), and (4) they would decide that night if they would take jurisdiction. If jurisdiction was decided on, the applicant would return to the Board at their next meeting with a proper site plan application.

Ms. Rogers said that, as jurisdictional matters came before the Board now, it would be difficult to decide whether they should take jurisdiction [the information provided was minimal]. There was some discussion among the Board members. The Town Planner said there was “a gap” between what information the Code Enforcement Officer got for a permit application and what the Board would get for site plan review (they included different questions).

The Chair suggested they decide what was considered “minor.” Ms. Tukey said they would have to change the ordinance in order to address that; she had researched “minor change” and there was no definition in the ordinance. She referred the Board to the first sentence of §16.4 which read in such a way that a definition could be figured out. She itemized three criteria: (1) was it an approved site plan, and would the issue be an amendment, (2) would it not affect compliance with approval standards (if it affected some approval standards [i.e. a variance or waiver], then it should be a site plan

reviewed by the Board), and (3) would it radically alter the essential "nature" of the original proposal? There was some discussion regarding variances and waivers before the Planning Board.

The Code Enforcement Officer addressed the Board, and stated that it couldn't be "generalized," nor could you define "minor" adequately. He thought everything should go to the Town Planner initially; she could ask for more information if necessary, and/or pass the application on to either the Planning Board or the Code Enforcement Office. He explained that he and Ms. Tukey did occasionally handle things that way now.

The Chair said that the Board was "struggling" with clarification of what the Code Enforcement Office did and what the Planning Board did. Mr. Wells said he "would like to be taken out of the equation," and reiterated that he thought things should go to the Town Planner first. The Chair stated that it was an "internal procedure" that needed clarity. There was further discussion.

The Town Planner explained that the ordinance would not give her the authority to make a decision, only to forward the matter to the Planning Board. Ms. Carrier said the ordinance would have to be changed; Ms. Tukey concurred. Ms. Floccher read from the ordinance, §13.1 "Pre-application." Ms. Tukey explained that she was already doing a pre-application conference with applicants. There was further discussion.

The Chair clarified that the Board had agreed that the Town Planner could go before them and "recommend" how the applicant would proceed. Ms. Tukey said she thought she could use the procedure as for shoreland zoning applicants - she could provide the Board with a brief memo and a site plan. The Board agreed with Ms. Tukey on the use of that procedure.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 8:28 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary